

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING REVISIONS TO COUNCIL POLICY 6-4, SIGNS ON CITY-OWNED LAND INCLUDING BILLBOARDS, PROGRAMMABLE ELECTRONIC SIGNS AND SIGNS DISPLAYING OFF-SITE COMMERCIAL SPEECH

WHEREAS, on January 10, 1972, the City Council of the City of San José (“City”) approved Council Policy 6-4, entitled “Billboards on City-Owned Land” (“Policy”), prohibiting any future use of billboards on City-owned land and directing the removal of billboards from City-owned land within five years; and

WHEREAS, the City desires to update Council Policy 6-4 in order to consider sign proposals for billboards, programmable electronic signs, and signs displaying off-site commercial speech on designated City-owned sites, in accordance with City Council direction and in compliance with state and federal regulations; and

WHEREAS, prior to making its determination on the revision of Council Policy 6-4, the City Council reviewed and considered an Initial Study/Negative Declaration for an amendment to the Envision San José 2040 General Plan to delete General Plan Land Use Policy CD-10.4, to revise Council Policy 6-4, and to update Sections 23.02.870 and 23.02.1310 of Title 23 of the San José Municipal Code to allow signs on City-owned property, including billboards, programmable electronic signs, and signs displaying off-site commercial speech, and to make updates or other technical, non-substantive changes, or formatting changes within those sections of Title 23 (Planning File No. PP18-058) and adopted the Negative Declaration by Resolution No. _____; and

WHEREAS, the Council of the City of San José is the decision-making body for the proposed revision of Council Policy 6-4; and

WHEREAS, this policy supersedes the Policy adopted on January 10, 1972 by the Council of the City of San José;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The revised Council Policy 6-4, entitled “Signs on City-Owned Land Including Billboards, Programmable Electronic Signs and Signs Displaying Off-Site Commercial Speech”, attached hereto as Exhibit A and incorporated herein by this reference as though fully set forth herein, is hereby approved and shall, as of the date and time of adoption of this Resolution, replace Council Policy 6-4, approved by the City Council on January 10, 1972.

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A

City of San José, California

COUNCIL POLICY

TITLE SIGNS ON CITY-OWNED LAND INCLUDING BILLBOARDS, PROGRAMMABLE ELECTRONIC SIGNS AND SIGNS DISPLAYING OFF-SITE COMMERCIAL SPEECH	PAGE 1 of 9	POLICY NUMBER 6-4
EFFECTIVE DATE November 9, 2018 (Replacement Policy 6-4)	REVISED DATE September 25, 2018	
APPROVED BY COUNCIL ACTION 1/10/72 (Original Policy 6-4); 9/25/18, Item X.X, Res. No. XXXXX (Replacement Policy 6-4)		

BACKGROUND

Council Policy 6-4 was originally approved in 1972, prohibiting future use of billboards on City-owned land and directing the removal of billboards from City-owned land within five (5) years. In 1974, the City Council adopted an ordinance prohibiting the placement of billboards within five hundred (500) feet of the right-of-way of certain freeways if designed to be visible to the freeway. In 1985, the City Council adopted a citywide ban on new billboards and continued in effect its prohibitions of other types of signs displaying off-site commercial speech.

In 2010, the City Council conducted a public hearing to consider a staff presentation outlining a preferred strategy for updating Title 23 of the San José Municipal Code (the Sign Code) and addressing billboards on private property. At the conclusion of the public hearing, Council approved maintaining the cap on the number of billboards in the City and directed staff to explore opportunities for moving existing billboards from residential areas to commercial areas. In December 2015, electronic digital off-site advertising signs and billboard installations were added to the Council priority list as a work item for staff. This item has been one of the top ten Council priorities since March 7, 2017. On December 19, 2017, the Council accepted the Community and Economic Development Committee status report on implementing a phased work plan to investigate removing existing barriers to off-site commercial advertising on City-owned and non-City-owned sites in the City of San José, that could allow:

1. New off-site advertising on City-owned sites throughout the City, including the exchange of existing legal static billboards on other sites for new electronic billboards on City-owned sites (Phase 1);

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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2. Exchange of existing legal static billboards for new electronic billboards on non-City-owned existing freeway-facing billboard sites and/or new freeway-facing sites in the North San José Development Policy Area (Phase 2);
3. New off-site advertising on non-City-owned sites in the Downtown Sign Zone, including exchange of existing legal static billboards on other sites for new electronic billboards in the Downtown Sign Zone (Phase 2).

This Policy implements Phase 1 of the December 19, 2017 Council direction.

DEFINITIONS

Except where the context otherwise requires, the definitions set forth in Part 1 of Chapter 23.02 of Title 23 of the San José Municipal Code are incorporated by reference into this Council Policy. Where a word or phrase is not defined in Part 1 of Chapter 23.02 of Title 23 of the San José Municipal Code, the definitions set forth in Chapter 20.200 of Title 20 of the San José Municipal Code are incorporated by reference into this Council Policy.

PURPOSE

To state Council Policy regarding existing and future use of Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-site Commercial Speech on City-owned land; to provide guidance regarding the implementation of a program that may allow Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-site Commercial Speech, on City-owned land; and to confirm the City's continued interest in regulating Signs on City-owned land to promote an aesthetically pleasing environment.

POLICY

1. The City will only allow the future use of Billboards and Signs displaying Off-Site Commercial Speech on City-owned land, as and where expressly allowed pursuant to this Council Policy 6-4.
2. The City may allow Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech on City-owned land pursuant to this Council Policy 6-4 for any of the following purposes, where consistent with applicable State and federal law:
 - a. To generate revenue for the City, including revenue to support City-owned facilities, programs, or services; and/or eliminate visual clutter and blight by reducing the overall number of existing Billboards City-wide, or

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eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses.

- b. To explore opportunities to enhance the commercial vibrancy of the City in selected locations, including the Downtown Sign Zone, while maintaining an aesthetically pleasing environment, by allowing the City to develop options for criteria and best practices and additional environmental review for non-City owned sites, based on the City’s experience with implementation of Phase 1.

IMPLEMENTATION

General

The City may allow Signs on City-owned land including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech, under this Council Policy, and in compliance with State and federal regulations. Signs approved under this Council Policy shall be in addition to any other Signs that may be allowed on the City-owned property under Title 23 of the San José Municipal Code.

This Policy identifies selection criteria for City-owned land on which the City Council may consider allowing these additional Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech. Based on the identified selection criteria, this Policy also designates up to seventeen (17) sites, which may be eligible or potentially eligible for up to twenty-two (22) additional Signs. Additional City-owned land may be considered eligible or potentially eligible for additional Signs under this Policy, if the Policy is amended by action of the City Council, which will require further review under the California Environmental Quality Act. (CEQA).

This Policy further specifies minimum limitations on the location, number, type, size and height of Signs that may be allowed under this Policy, including illumination requirements. In addition, this Policy identifies message limitations that the City may impose on Signs approved pursuant to this Policy.

Finally, this Policy generally describes the process for the approval of additional Signs that may be allowed under the Policy.

Site Selection Criteria

The following site selection criteria have been used to designate City-owned land that is or may be potentially eligible for additional Signs under this Policy, and subject to direction of the City Council, to screen additional City-owned land for eligibility for such Signs.

- 1. The site, which may consist of parcels, a parcel, or a portion of a parcel, has a General Plan Land Use/Transportation Diagram designation other than Open

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Space, Parkland, Habitat, Lower Hillside, Agriculture, Private Recreation and Open Space, Open Hillside, Mixed-use Neighborhood, Transit Residential, Urban Residential or Residential Neighborhood.

2. The site is in a Zoning District other than OS Open Space or A Agricultural.
3. A Sign can be located on the site consistent with Council Policy 6-34 (Riparian Corridor Protection and Bird Safe Design).
4. A Sign can be located on the site consistent with City policies and design guidelines for development in proximity to or on Structures designated as historical resources as defined in CEQA Guidelines Section 15064.5, or historic landmarks or candidate historic landmarks by the City, State, or Federal government, and shall conform to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as well as Chapter 13.48, "Historic Preservation," of Title 13 of the Municipal Code.
5. Locating a Sign on the site would be compatible with any existing use on the site or any potential use of the site for purposes other than a Sign.
6. The Finance Department has determined that the site can, or may potentially be, used for a Sign without violating bond covenants or other financing restrictions. Final clearance from the Finance Department will be required prior to completion of the approval process for placement of a Sign on the site pursuant to the section of this Policy entitled "Sign Approval Process".

Designated Sites

As of the date of this Policy, the sites that have been identified as eligible, or potentially eligible, for additional Signs under this Policy, based on the above selection criteria are identified in Attachment A. This Policy may be amended by action of the City Council to add sites that may be considered eligible or potentially eligible for Signs pursuant to this Policy, subject to further review under the California Environmental Quality Act (CEQA).

Sign Location, Type, Size, Height and Number

1. The Sign location must comply with all requirements of State and federal law.
2. Any Programmable Electronic Sign must be located on the site such that:
 - a. The Sign is not visible from any dwelling unit that is located within one hundred fifty (150) linear feet of the Sign; and
 - b. The Sign is greater than one hundred fifty (150) linear feet from the nearest boundary line of a Residential Zoning District.

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3. Signs shall not have a total Sign Area in excess of twelve hundred (1,200) square feet.
4. Sign Area shall be computed as provided in Section 23.02.910 of the San José Municipal Code.
5. Freestanding Signs shall be subject to the following Height limitations, computed as provided in Section 23.02.930 of the San José Municipal Code:
 - a. Signage, including Supporting Structure, shall not exceed sixty (60) feet in Height above surrounding grade, except for Freestanding Freeway Signs meeting the criteria for a height exception specified in Section 23.04.035C.2 of the San José Municipal Code. Further Height limitations may apply based on other consideration, such as Federal Aviation Administration (FAA) criteria.
 - b. All Freestanding Monument Signs shall rest on a base of at least eighteen (18) inches in Height.
 - i. The Height to the top of the base of a Freestanding Monument Sign shall not be more than twenty-two (22) feet above grade.
 - ii. The base of a Freestanding Monument Sign shall be architecturally consistent with the largest building on the parcel and the Sign it supports. The base shall be constructed of durable materials and surrounded by landscaping, as needed for soil stability, drainage, site accessibility and architectural integrity.

Sign Illumination

1. All Programmable Electronic Signs shall operate in conformance with the operational requirements for Programmable Electronic Signs as specified in Section 23.02.905 of the San José Municipal Code, except that such Signs may display Off-Site Commercial Speech.
2. No Sign shall be in operation between the hours of 12:00 a.m. and 6:00 a.m., except that Signs may display emergency messages from local, state, and federal governments at any time.
3. Signs shall be constructed of high-quality and durable materials and shall be installed with sensors to automatically lower light output in accordance with atmospheric conditions. Throughout Sign operation, the dimness setting shall be automatically adjusted so that it does not exceed the level of illumination, as specified in Section 23.02.905 of the San José Municipal Code.

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4. Illuminated Signs, including Billboards, and Programmable Electronic Signs, shall at a minimum meet the following additional requirements between the hours of sunset and 12:00 a.m.:
 - a. The Signs must be tilted downward toward the ground by at least fifteen (15) degrees and provide a rimmed edge along the top of the Sign, or shall utilize other alternative(s) which the City determines will provide equivalent attenuation of upward illumination.
 - b. The Signs shall utilize warmer colors, or display a background with bright text and/or image(s), and restrict white or bright backgrounds.
 - c. No new east-facing Programmable Electronic Signs or Billboards will be allowed in the Alum Rock Planning Area.

Downtown Sign Zone

All Signs approved in the Downtown Sign Zone pursuant to this Policy shall be subject to the following additional requirements:

1. Attached Signs shall not cover any portion of a window or door that is located less than seventy-five (75) feet above grade.
2. A Sign that is not a Programmable Electronic Sign may be internally lit, or externally lit only with downlighting that is shielded to minimize upward illumination.
3. Only one Sign will be allowed per site, except for the sites designated for up to two (2) Signs on Attachment A. An Attached Sign that covers all or any part of more than one (1) Building Façade shall be considered one (1) Sign provided that the total Sign area on all Building Facades does not exceed the maximum area stated above.

Airport Influence Area

All Signs approved in the Airport Influence Area pursuant to this Policy shall be subject to the following additional requirements:

1. No Sign shall be erected within any Airport Runway Protection Zone.
2. Signage located within an Airport Influence Area shall conform to illumination requirements, as specified in Section 23.04.250 of the San José Municipal Code.
3. Signage within Airport Influence Area must meet FAA criteria.

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All Zones other than Downtown Sign Zone

Only Programmable Electronic Signs will be allowed under this Policy in zones other than the Downtown Sign Zone.

Message Limitations

1. No Sign approved pursuant to this Policy shall display a message that contains false advertising, speech inciting unlawful activity, defamatory speech, “fighting words” or obscene speech.
2. By approval of this Policy, the City does not intend to create a public forum on any of the sites that are or may be designated as potential Sign sites pursuant to this Policy. The City may limit any Sign or Signs approved pursuant to this Policy to only the display of commercial messages.
3. The City may develop a list of goods, products or services that may not be advertised on City-owned Signs. Such list will be subject to City Council approval and if approved will be included in the solicitation for proposals described below in the “Sign Approval Process” section of this Policy.
4. The City may require any Sign approved pursuant to this Policy to reserve message space or time for City government speech.

Sign Approval Process

1. The City will solicit proposals for Signs to be approved pursuant to this Policy. City Council direction will be obtained prior to the commencement of any solicitation process.
2. The City may approve placement of a Sign on City-owned land pursuant to this Policy through approval of a lease or other contractual agreement. Development specific environmental clearance under CEQA and the issuance of a building permit for the approved Sign will be required; but no other regulatory permit issued by the City will be required, such as a site Development Permit. This Policy shall supersede Council Policy 6-16 with respect to permitting requirements for uses of Public Property, but the noticing requirements that would apply for a Site Development Permit shall apply to the Council consideration of any lease or other contractual agreement for a Sign pursuant to this Policy.
3. A sign is that is allowed pursuant to this Policy on a site that is subject to the requirements of Business and Professions Code Section 5272 (b) (freeway site for large arena sponsorship sign) shall be required to comply with all requirements of Business and Professions Code Section 5272 (b). Any lease for such sign shall incorporate provisions to implement the requirements of Business and Professions Code Section 5272 (b).

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4. On City-owned sites that would be subject to a lease for another use at the time a Sign may be approved pursuant to this Policy, the City will coordinate the process for solicitation or approval of sign proposals with the lessee, and, if required, obtain the lessee's consent.
5. The City may solicit proposals for any, some or all, of the following purposes pursuant to this Policy:
 - a. To generate revenue for the City;
 - b. To generate revenue to support City-owned facilities, programs, or services;
 - c. To eliminate visual clutter and blight by reducing the overall number of existing Billboards City-wide or eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses.
6. If the City solicits proposals for reduction or elimination of existing Billboards, a minimum take down ratio of four (4) existing Billboards shall be required for each new Sign, including Billboard, Programmable Electronic Sign or Sign displaying Off-Site Commercial Speech.
7. To further the City's purpose of eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses, any entity with an existing Billboard or Sign displaying Off-site Commercial Speech will be required to identify such Billboards or Signs displaying Off-Site Commercial Speech as a condition of submitting a proposal to the City for Signs that may be approved pursuant to this Policy.

ATTACHMENT A

List 1. Potential City-owned Sites for proposed Signage Installation

APN	CURRENT USE	ADDRESS	SIGNS
259-34-039	San Pedro Market Parking Garage	45 North Market Street	2
467-21-002	CSJ Parking Garage	95 North Third Street	1
259-43-064	Center for Performing Arts	255 Almaden Boulevard	2
467-46-109	Hammer Theater	101 Paseo San Antonio	2
467-46-097	CSJ Parking Garage	280 South Second Street	1
259-40-066	San Jose Museum of Art	110 South Market Street	1
259-28-043	SAP Center	525 West Santa Clara Street	2
254-01-004	Mabury Service Yard *	1404 Mabury Road	1
259-06-054	CSJ Parking Lot	737 North San Pedro Street	1
259-04-019	CSJ Parking Lot	Hwy 87 and West Mission Street	1
101-03-009	Airport Facility ^{1*}	2500 Seaboard Avenue	1
230-01-058	Airport Facility ¹	2200 Airport Boulevard	1
230-46-065	Airport Facility ¹	1128 Coleman Avenue	1
230-02-021	Airport Facility ^{1*}	2341 Airport Boulevard	1

¹ FAA requires City receive fair market value for use of property

* State law restricts to on-site commercial speech and large arena sponsorship signage.

List 2. Potential City-owned Sites subject to additional clearance

APN	CURRENT USE	ADDRESS	SIGNS
259-42-023	The Tech **	201 South Market Street	1
230-37-020	Vacant Lot (Near National Guard) *	Hwy 87 and West Hedding Street	1
264-29-113	McEnery Convention Center **	150 West San Carlos Street	2

* State law requires rezoning prior to consideration

** Currently identified to require financial/ bond restriction clearance prior to consideration. All sites will require final clearance from the Finance Department prior to completion of the approval process for placement of the sign on the site pursuant to the section of this Policy entitled "Sign Approval Process."